



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: September 3, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Sandy Chalmers, Administrator, Division of Trade and Consumer Protection *Sandy Chalmers*

SUBJECT: Amending Ch. ATCP 134, WI Admin. Code, Residential Rental Practices,
Final Draft Rule

PRESENTED BY: Michelle Reinen

REQUESTED ACTION:

At the September 17, 2014, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize a final draft of a proposed rule (copy attached) to amend ch. ATCP 134 related to residential rental practices. This rule aligns certain provisions in the existing Ch. ATCP 134 with provisions in Ch. 704 (Landlord and Tenant) recently created in 2011 Wisconsin Act 143 and 2013 Wisconsin Act 76.

SUMMARY:
Background

DATCP enacted ch. ATCP 134, Wis. Adm. Code, in 1980 and the rule was revised in 1998. The existing rule regulates rental transactions between landlords and residential tenants as follows:

- Requires the landlord to provide to the tenant before entering into the rental agreement copies of the rental agreement and a receipt for any earnest money or security deposits that the tenant has paid to the landlord.
- Requires the landlord to disclose to the tenant before entering into the rental agreement the names and addresses of the owners and managers, code violations and other conditions affecting habitability, and any utility charges that the tenant may be required to pay.
- Prescribes procedures for accepting and withholding earnest money fees and credit check fees.
- Prescribes procedures for handling security deposits.
- Prescribes procedures for promises to repair.
- Prohibits a landlord from including in rental agreements provisions that do the following:
 - Authorize unlawful eviction.
 - Accelerate rent payments in event of tenant default.
 - Require the tenant to pay attorney's fees.

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- Authorize the landlord to enter a plea in a court action on behalf of the tenant in which the tenant agrees to accept a judgment against the tenant.
- Relieve the landlord from liability for property damage or personal injury caused by the landlord.
- Impose liability on the tenant for property damage or personal injury not caused by the tenant.
- Waive statutory or legal obligations of the landlord.
- Prohibits a landlord from:
 - Advertising or renting condemned premises.
 - Unauthorized entries.
 - Automatically renewing a lease without notice.
 - Unlawfully confiscating personal property.
 - Engaging in retaliatory or self-help eviction.
 - Charging late rental fees and other penalties not specified in the lease.
 - Misrepresenting the dwelling units offered or the amount of all rent and non-rent charges.
 - Failing to disclose all non-rent charges in connection with the representation of any rent amount.

Rule Content

2011 Wisconsin Act 143 was enacted on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect certain provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Disposing of personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

2013 Wisconsin Act 76 was enacted on December 12, 2013. Act 76, among other things, made additional changes to landlord, tenant and DATCP obligations in ch. 704, Stats., including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections.
- Prohibition on rental agreement terms that allows landlord to terminate tenancy if a crime is committed in or on the rental property.
- Violations of s. 704.28 or 704.44, Stats., may be an unfair trade practice under s. 100.20, Stats., but the department may not issue an order under s. 100.20, Stats., that conflicts with rights and duties arising under ch. 704, Stats.

This rule makes revisions to ch. ATCP 134 that are necessary to conform the rule to provisions of ch. 704, Stats. (as amended), and ensure that enforcement of the rule will not change a right or duty provided by ch. 704, Stats.

Definitions

The proposed rule makes a minor technical revision to the existing rule definition of “dwelling unit” to conform to recent changes in ch. ATCP 125, Wis. Adm. Code.

The proposed rule revises existing rule definitions of “premises” and “rental agreement” to conform them to the most recent version of ch. 704, Stats.

Disclosures required before entering into a rental agreement

The current rule requires a landlord to make certain disclosures to the prospective tenant before entering into a rental agreement or accepting any earnest money or security deposit. These disclosures relate to various conditions affecting habitability, including uncorrected building code violations.

2011 Act 143 created s. 704.07 (2) (bm), Stats., which requires disclosures relating to building code violations that are generally similar to the disclosures prescribed by the current rule.

This rule repeals and recreates the building code violation disclosure requirement to conform it to the disclosure required by the statute.

Returning security deposits

The current rule establishes a deadline for return of security deposits to the tenant. In most cases, the landlord must return the security deposit with 21 days of the tenant vacating the property.

2011 Act 143 created, and 2013 Act 76 amended, s. 704.28 (4), Stats., which incorporates similar security deposit return requirements. Under the new statutory requirements, if the tenant vacates the property before the end of the rental agreement, and the landlord does not re-rent the property, the landlord must return the security deposit within 21 days of the last day of the rental agreement.

This rule amends the requirement to a return a security deposit to conform to the statutory provision.

Withholding security deposits

Under the current rule, a landlord may withhold a tenant’s security deposit only for specific reasons listed in the rule, such as: damage to the premises; unpaid rent; unpaid utilities or

assessments for which the landlord is liable; or, other reasons specifically listed in the rental agreement as “nonstandard rental provisions.”

Act 143 created s. 704.28 (1), Stats., which incorporates very similar (but not identical) provisions into the statute.

This rule makes minor changes to the provisions relating to withholding a tenant’s security deposit to conform the rule to the statute, but does not substantially change the requirements from the current rule. It also makes slight changes related to “nonstandard rental provisions” to conform to s. 704.28 (2), Stats., as created by 2011 Act 143 and amended by 2013 Act 76.

Prohibited rental agreement provisions

The current rule describes provisions that a landlord is prohibited from placing in a rental agreement, such as:

- Authorizing eviction by other than judicial procedure.
- Acceleration of rent payments if tenant breaches obligations.
- Requiring the tenant to pay landlord’s attorney’s fees in the event of a dispute.
- Authorizing landlord to confess judgment against the tenant.
- Relieving the landlord from liability for damage or injury caused by negligent acts or omissions of the landlord.
- Imposing liability on the tenant for personal injury arising from causes clearly beyond the tenant’s control.
- Waiving the obligation of the landlord to deliver and maintain the premises in fit or habitable condition.

2011 Act 143 created and 2013 Act 76 revised portions of s. 704.44, Stats., which identify prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. In addition, 2011 Act 143 created two new prohibited rental agreement provisions – allowing the landlord to take certain actions because a tenant contacted law enforcement, health, or safety services; or allowing the landlord to terminate the tenancy if a crime is committed on the rental property. 2013 Act 76 refined this particular prohibition to clarify that it applies to a termination of tenancy based solely on the commission of a crime. 2013 Act 76 also adds an additional prohibition against rental provisions that allow termination for a crime committed in relation to the rental property.

Further, Act 143 states that the entire rental agreement is void and unenforceable if it contains any of the prohibited provisions. The current rule does not have such a provision, but instead relies on a test established by the courts to determine whether the entire rental agreement is void based on the inclusion of a prohibited provision.

This rule revises the prohibition on certain rental agreement provisions so that the rule is identical to the new statute. This rule also incorporates the provision in s. 704.44, Stats., that

declares the entire rental agreement is void and unenforceable if it contains any of the prohibited rental agreement provisions.

Confiscating personal property left behind by the tenant

The current rule prohibits the landlord from confiscating the tenant's personal property except as authorized by law or in accordance with a written lien agreement. The current rule also prescribes the form and manner in which the landlord and tenant may execute the lien agreement.

2011 Act 143 and 2013 Act 76 revised s. 704.05 (5), Stats., to give a landlord the discretion to dispose of personal property left behind by the tenant without a written lien agreement, as long as certain conditions are met. For example, there must not be a written agreement to the contrary, and the landlord must provide notice to the tenant of his or her intent not to store the property before the tenant enters into or renews a rental agreement.

This rule amends the current rule to more align it with s. 704.05 (5), Stats. It replaces references to a "written lien agreement" with a more general "written agreement" and imposes conditions on an agreement that allows a landlord to seize or hold a tenant's personal property.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

Federal law does not generally regulate landlord and tenant relationships or residential rental practices. The Federal Fair Housing Act of 1968 makes it illegal for a landlord to discriminate against a potential tenant because of a person's race, sex, national origin, or religion, and it prohibits certain discriminatory conduct.

Comparison with Rules in Adjacent States

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These laws address common topics such as rental agreements, security deposits, and other duties of landlords and tenants.

Summary of Factual Data and Analytical Methodologies

This rule modifies the current rule only to conform it to recent changes to the Wisconsin statutes. DATCP did not conduct any factual or data analysis.

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

DATCP has carefully reviewed the provisions of ch. 704, Stats. (as amended by 2011 Wisconsin Act 143 and 2013 Wisconsin Act 76) to ensure that changes to the rule align with the provisions of ch. 704. DATCP has also reviewed the public comments on this rule in preparation of the final analysis.

Effect on Small Business

DATCP anticipates that this rule will not have an economic impact on small business. This rule makes changes to the current rule to align the rule with recent statutory changes to ch. 704, Stats. There are no changes in the rights or duties prescribed by current law that have an economic impact on business.

Hearings

DATCP held a public hearing on this rule on July 9, 2014. There were 4 attendees at the hearing. No attendees provided testimony or registered in support or opposition to the proposed rule. DATCP received two written comments on the proposed rule. A summary of the hearings and comments is attached.

Changes from Hearing Draft

DATCP made some changes from the hearing draft rule. However, all of these changes were minor editorial or technical revisions suggested by the Rule Clearinghouse.

Next Steps

If the Board approves this final draft rule, DATCP will transmit the final draft rule for the Governor's written approval and then for legislative committee review. If the Legislature takes no action to stop the rule, the DATCP Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the month following publication.

RULEMAKING HEARING
Public Hearing Appearances and Written Testimony

Rule Subject: Residential Rental Practices
Adm. Code Reference: ATCP 134, Wis. Adm. Code
Rules Clearinghouse #: 14-038
DATCP Docket # 14-R-02

Public Comments Received

DATCP received two written comments on this rule.

1) Attorney Mitch
Neighborhood Law Clinic at the University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399

These comments oppose the changes to ATCP 134, relating to security deposits. Their comments state that our current rule is not in conflict with the statute and is allowed under s. 100.20, Stats. The department feels its interpretation of its statutory authority is correct and did not make any changes to the final draft rule in response to these comments.

2) Doug Ottum
Cornerstone Real Estate Management
1233 A Menomonie Street
Eau Claire, WI 54703

(Note: These comments were submitted in mid-April and requested to be part of the hearing record).

These comments suggest several changes and clarifications to the rule not included in the scope statement or the hearing draft rule. Because the scope statement limited this rule change to harmonizing the rule with the statute, the department cannot address the proposed changes at this time.

Public Hearing Attendance Cards-Position on Rule and Verbal Testimony

DATCP held one public hearing on the rule:

- Madison on July 9, 2014

There were four attendees at the hearing. None of the attendees provided testimony or registered in support or opposition to the hearing draft rule.

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Kristen Zehner, Marshall WI, representing Wisconsin Manufactured Home Owners Association

James Williams, Marshall WI, representing Wisconsin Manufactured Home Owners Association

Lara Carlson, Madison, WI, representing the Neighborhood Law Clinic

Molly Stacy, Madison, WI, representing the Neighborhood Law Clinic

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 rule *to amend* ATCP 134.02 (2), (9) and (10), 134.06 (3) (a) (intro) and 1., 3., 4., 5., and 6., (b)
3 and (c), and 134.09 (4) (b); *to repeal and recreate* ATCP 134.04 (2) (a), 134.06 (2), 134.08 and
4 134.09 (4) (a); and *to create* ATCP 134.06 (3) (a) (title), (b) (title), and (c) (title), *relating to*
5 Residential Rental Practices.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

Statutes Interpreted

Statutes Interpreted: ss. 100.20 (1), 704.05 (5) (bf), 704.07 (2) (bm), 704.11, 704.28 (1),
(2) and (4) (b), and 704.44, Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 100.20 (2)(a), and 704.95, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate administrative rules prohibiting trade practices determined by the department to be unfair, and prescribing trade practices determined by the department to be fair.

The department determined, when the rule was first promulgated in 1981, that the trade practices prohibited by ch. ATCP 134, Wis. Adm. Code, were unfair pursuant to s. 100.20, Stats.

Section 704.95, Stats. (created by 2011 Wisconsin Act 143 and amended by 2013 Wisconsin Act 76), provides that a violation of s. 704.28 or 704.44, Stats., may also be an unfair trade practice under s. 100.20. Section 704.95, Stats., also confirms that the department may issue an order or

promulgate a rule under s. 100.20 that does not conflict with a right or duty arising under ch. 704, Stats.

This rule only makes changes to existing rules that do not conflict with rights and duties arising under ch. 704, Stats.

Related Statutes and Rules

Chapter 704, Stats., regulates transactions between landlords and both residential and non-residential tenants. The department does not administer ch. 704, Stats. (except for s. 704.90, Stats., relating to self-service storage facilities).

Chapter ATPC 125, Wis. Adm. Code, regulates rental transactions for sites upon which the tenant places a manufactured home owned by the tenant.

2011 Wisconsin Act 143 and 2013 Wisconsin Act 76 also created s. 66.0104, Stats., which limits a municipality's authority to restrict certain rights and duties of landlords and specifically states that an ordinance that is "inconsistent" with the protected rights and duties of a landlord "does not apply and may not be enforced."

Plain Language Analysis

Background

The department enacted ch. ATPC 134, Wis. Adm. Code, in 1980 and the rule was revised in 1998. The existing rule regulates rental transactions between landlords and residential tenants as follows:

- Requires the landlord to provide to the tenant before entering into the rental agreement copies of the rental agreement and a receipt for any earnest money or security deposits that the tenant has paid to the landlord.
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- Relieve the landlord from liability for property damage or personal injury caused by the landlord.
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Rule Content

2011 Wisconsin Act 143 was enacted on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect some of the provisions of the current rule relating to:

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- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

2013 Wisconsin Act 76 was enacted on December 12, 2013. Act 76, among other things, made additional changes to landlord tenant requirements in ch. 704, Stats., including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections.
- Prohibition on rental agreement terms that allows landlord to terminate tenancy if a crime is committed in or on the rental property.
- Violations of s. 704.28 or 704.44, Stats., may be an unfair trade practice under s. 100.20, Stats., and the department may not issue an order under s. 100.20, Stats., that conflicts with rights and duties arising under ch. 704, Stats.

This rule makes revisions to ch. ATCP 134 that are necessary to conform the rule to provisions of ch. 704, Stats. (as amended), and ensure that enforcement of the rule will not change a right or duty provided by ch. 704, Stats.

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This rule repeals and recreates the building code violation disclosure requirement to conform it to the disclosure required by the statute.

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2011 Act 143 created, and 2013 Act 76 amended, s. 704.28 (4), Stats., which incorporates similar security deposit return requirements. Under the new statutory requirements, if the tenant vacates the property before the end of the rental agreement, and the landlord does not re-rent the property, the landlord must return the security deposit within 21 days of the last day of the rental agreement.

This rule amends the requirement to a return a security deposit to conform to the statutory provision.

Withholding security deposits

Under the current rule, a landlord may withhold a tenant’s security deposit only for specific reasons listed in the rule such as damage to the premises; unpaid rent; unpaid utilities or assessments for which the landlord is liable; or other reasons specifically listed in the rental agreement as “nonstandard rental provisions.”

Act 143 created s. 704.28 (1), Stats., which incorporates very similar (but not identical) provisions into the statute.

This rule makes minor changes to the provisions relating to withholding a tenant's security deposit to conform to the statute, but does not substantially change the requirements from the current rule. It also makes slight changes related to "nonstandard rental provisions" to conform to s. 704.28 (2), Stats., as created by 2011 Act 143 and amended by 2013 Act 76.

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The current rule describes provisions that a landlord is prohibited from placing in a rental agreement, such as:

- Authorizing eviction by other than judicial procedure.
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- Authorizing landlord to confess judgment against the tenant.
- Relieving the landlord from liability for damage or injury caused by negligent acts or omissions of the landlord.
- Imposing liability on the tenant for personal injury arising from causes clearly beyond the tenant's control.
- Waiving the obligation of the landlord to deliver and maintain the premises in fit or habitable condition.

2011 Act 143 created and 2013 Act 76 revised portions of s. 704.44, Stats., which identify prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. In addition, 2011 Act 143 created two new prohibited rental agreement provisions – allowing the landlord to do certain things because a tenant contacted law enforcement, health, or safety services; or allowing the landlord to terminate the tenancy if a crime is committed on the rental property. 2013 Act 76 refined this particular prohibition to clarify that it applies to a termination of tenancy based solely on the commission of a crime. 2013 Act 76 also adds an additional prohibition against rental provisions that allow termination for a crime committed in relation to the rental property.

Further, Act 143 states that the entire rental agreement is void and unenforceable if it contains any of the prohibited provisions. The current rule does not have such a provision, but instead relies on a test established by the courts to determine whether the entire rental agreement is void based on the inclusion of a prohibited provision.

This rule revises the prohibition on certain rental agreement provisions so that the rule is identical to the new statute. This rule also incorporates the provision in s. 704.44, Stats., that declares the entire rental agreement is void and unenforceable if it contains any of the prohibited rental agreement provisions.

Confiscating personal property left behind by the tenant

The current rule prohibits the landlord from confiscating the tenant's personal property except as authorized by law or in accordance with a written lien agreement. The current rule also

prescribes the form and manner in which the landlord and tenant may execute the lien agreement.

2011 Act 143 and 2013 Act 76 revised s. 704.05 (5), Stats., to give a landlord the discretion to dispose of personal property left behind by the tenant without a written lien agreement, as long as certain conditions are met. For example, there must not be a written agreement to the contrary, and the landlord must provide notice to the tenant of his or her intent not to store the property before the tenant enters into or renews a rental agreement.

This rule amends the current rule to more closely align it with s. 704.05 (5), Stats. It replaces references to a “written lien agreement” with a more general “written agreement” and imposes conditions on an agreement that allows a landlord to seize or hold a tenant’s personal property.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

Federal law does not generally regulate landlord and tenant relationships or residential rental practices. The Federal Fair Housing Act of 1968 makes it illegal for a landlord to discriminate against a potential tenant because of a person’s race, sex, national origin, or religion, and it prohibits certain discriminatory conduct.

Comparison with Rules in Adjacent States

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These laws address common topics such as rental agreements, security deposits, and other duties of landlords and tenants.

Summary of Factual Data and Analytical Methodologies

This rule modifies the current rule only to conform it to recent changes to the Wisconsin statutes. DATCP did not conduct any factual or data analysis.

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

DATCP has carefully reviewed the provisions of ch. 704, Stats. (as amended by 2011 Wisconsin Act 143 and 2013 Wisconsin Act 76) to ensure that changes to the rule align with the provisions of ch. 704. DATCP has also reviewed the public comments on this rule in preparation of the final analysis.

Effect on Small Business

DATCP anticipates that this rule will not have an economic impact on business. This rule makes changes to the current rule to align the rule with recent statutory changes to ch. 704, Stats. Accordingly, there are no changes in the rights or duties prescribed by current law.

DATCP Contact

Questions and comments related to this rule may be directed to:

Michelle Reinen
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5160
E-Mail: michelle.reinen@wisconsin.gov

1 SECTION 1. ATPC 134.02 (2) is amended to read:

2 ATPC 134.02 (2) "Dwelling unit" means a structure or that part of a structure that is
3 primarily used as a home, residence, or place of abode. The term includes a manufactured home
4 as defined in s. ATPC 125.01 (1s) or ~~manufactured home~~ site as defined in s. ATPC 125.01 (1s)
5 and (7).

6 SECTION 2. ATPC 134.02 (9) and (10) are amended to read:

7 ATPC 134.02 (9) "Premises" means ~~a dwelling unit and the structure of which it is a part~~
8 ~~and all appurtenances, grounds, areas, furnishings and facilities held out for the use or enjoyment~~
9 ~~of the tenant or tenants generally~~ the property covered by the lease, including not only the realty
10 and fixtures, but also any personal property furnished with the realty.

11 (10) "Rental agreement" means an oral or written agreement between a landlord and
12 tenant, for the rental or lease of a specific dwelling unit or premises, in which the landlord and
13 tenant agree on the essential terms of the tenancy, such as rent. "Rental agreement" includes a
14 lease. "Rental agreement" does not include an agreement to enter into a rental agreement in the
15 future.

16 SECTION 3. ATPC 134.04 (2) (a) is repealed and recreated to read:

17 ATPC 134.04 (2) (a) Any building code or housing code violation to which all of the
18 following apply:

1 1. The landlord has actual knowledge of the violation.

2 2. The violation affects the dwelling unit that is the subject of the prospective rental
3 agreement or a common area of the premises.

4 3. The violation presents a significant threat to the prospective tenant's health or safety.

5 4. The violation has not been corrected.

6 **SECTION 4.** ATCP 134.06 (2) is repealed and recreated to read:

7 ATCP 134.06 (2) RETURNING SECURITY DEPOSITS. A landlord shall deliver or mail to a
8 tenant the full amount of any security deposit paid by the tenant, less any amounts that may be
9 withheld under sub. (3), within 21 days after the any of the following:

10 (a) If the tenant vacates the premises on the termination date of the rental agreement, the
11 date on which the rental agreement terminates.

12 (b) If the tenant vacates the premises or is evicted before termination date of the rental
13 agreement, the date on which the tenant's rental agreement terminates or, if the landlord rerents
14 the premises before the tenant's rental agreement terminates, the date on which the new tenant's
15 tenancy begins.

16 (c) If the tenant vacates the premises or is evicted after the termination date of the rental
17 agreement, the date on which the landlord learns that the tenant has vacated the premises or has
18 been removed from the premises under s. 799.45 (2), Stats.

19 **Note:** A rent payment in excess of one month's prepaid rent is considered a "security
20 deposit" as defined under s. ATCP 134.02 (11). This chapter does not prevent a landlord from
21 collecting more than one month's prepaid rent. However, if the landlord holds any rent
22 prepayment in excess of one month's prepaid rent when the tenant surrenders the premises, the
23 landlord must treat that excess as a "security deposit" under sub. (2).

24 **Note:** See Pierce v. Norwick, 202 Wis. 2d 588 (1996), regarding the award of damage
25 claims for failure to comply with provisions of this chapter related to security deposits and
26 earnest money deposits.

27 **SECTION 5.** ATCP 134.06 (3) (a) (title) is created to read:

1 ATCP 134.06 (3) (a) *Standard withholding provisions.*

2 SECTION 6. ATCP 134.06 (3) (a) (intro) and 1., 3., 4., 5., and 6. are amended to read:

3 ATCP 134.06 (3) (a) A When a landlord returns a security deposit to a tenant after the
4 tenant vacates the premises, the landlord may withhold from a tenant's the full amount of the
5 security deposit only amounts reasonably necessary to pay for any of the following:

6 1. Tenant Except as provided in par. (c), tenant damage, waste or neglect of the premises.

7 3. Payment ~~which~~ that the tenant owes under the rental agreement for utility service
8 provided by the landlord but not included in the rent.

9 4. Payment ~~which~~ that the tenant owes for direct utility service provided by a
10 government-owned utility, to the extent that the landlord becomes liable for the tenant's
11 nonpayment.

12 5. Unpaid mobile home parking fees ~~which a local unit of government has monthly~~
13 municipal permit fees assessed against the tenant by a local unit of government under s. 66.0435
14 (3), Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.

15 6. ~~Other reasons authorized~~ Any other payment for a reason provided in the a
16 nonstandard rental agreement according to provision document described in par. (b).

17 SECTION 7. ATCP 134.06 (3) (b) (title) is created to read:

18 ATCP 134.06 (3) (b) *Nonstandard rental provisions.*

19 SECTION 8. ATCP 134.06 (3) (b) is amended to read:

20 ATCP 134.06 (3) (b) A Except as provided in par. (c), a rental agreement may include
21 one or more nonstandard rental provisions ~~which~~ that authorize a the landlord to withhold
22 amounts from a the tenant's security deposit for reasons not ~~identified under~~ specified in par. (a)
23 1. to 5. The landlord shall include the Any such nonstandard rental provisions, if any, shall be

1 provided to the tenant in a separate written document entitled “**NONSTANDARD RENTAL**
2 **PROVISIONS.**” ~~which the landlord provides to the tenant.~~ The landlord shall specifically
3 identify ~~and discuss~~ each nonstandard rental provision with the tenant before the tenant enters
4 into ~~any~~ a rental agreement with the landlord. If the tenant signs his or her name, or writes his or
5 her initials, by a nonstandard rental provision, it is rebuttably presumed that the landlord has
6 specifically identified ~~and discussed~~ that the nonstandard rental provision with the tenant, and
7 that the tenant has agreed to it.

8 SECTION 9. ATCP 134.06 (3) (c) (title) is created to read:

9 ATCP 134.06 (3) (c) *Normal wear and tear.*

10 SECTION 10. ATCP 134.06 (3) (c) is amended to read:

11 ATCP 134.06 (3) (c) This subsection does not authorize a landlord to withhold any
12 amount from a security deposit for normal wear and tear, or for other damages or losses for
13 which the tenant cannot reasonably be held responsible under applicable law.

14 SECTION 11. ATCP 134.08 is repealed and recreated to read:

15 **ATCP 134.08 Prohibited rental agreement provisions – rental agreement that**
16 **contains certain provisions is void.** Notwithstanding s. 704.02, Stats., a rental agreement is
17 void and unenforceable if it does any of the following:

18 (1) Allows a landlord to do any of the following because a tenant has contacted an entity
19 for law enforcement services, health services, or safety services:

20 (a) Increase rent.

21 (b) Decrease services.

22 (c) Bring an action for possession of the premises.

23 (d) Refuse to renew a rental agreement

1 (e) Threaten to take any action under pars. (a) to (d).

2 (2) Authorizes the eviction or exclusion of a tenant from the premises, other than by
3 judicial eviction procedures as provided under ch. 799, Stats.

4 (3) Provides for an acceleration of rent payments in the event of tenant default or breach
5 of obligations under the rental agreement, or otherwise waives the landlord's obligation to
6 mitigate damages as provided under s. 704.29, Stats.

7 (4) Requires payment by the tenant of attorney fees or costs incurred by the landlord in
8 any legal action or dispute arising under the rental agreement. This subsection does not prevent
9 a landlord or tenant from recovering costs or attorney fees under a court order under ch. 799 or
10 814, Stats.

11 (5) Authorizes the landlord or an agent of the landlord to confess judgment against the
12 tenant in any action arising under the rental agreement.

13 (6) States that the landlord is not liable for property damage or personal injury caused by
14 negligent acts or omissions of the landlord. This subsection does not affect ordinary
15 maintenance obligations of a tenant under s. 704.07, Stats., or of a tenant under a rental
16 agreement or other written agreement between the landlord and the tenant.

17 (7) Imposes liability on a tenant for any of the following:

18 (a) Personal injury arising from causes clearly beyond the tenant's control.

19 (b) Property damage caused by natural disasters, or by persons other than the tenant or
20 the tenant's guests or invitees. This paragraph does not affect ordinary maintenance obligations
21 of a tenant under s. 704.07, Stats., or of a tenant under a rental agreement, or other written
22 agreement between the landlord and the tenant.

23 (8) Waives any statutory or other legal obligation on the part of the landlord to deliver the

premises in a fit or habitable condition, or to maintain the premises during the tenant's tenancy.

(9) Allows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property if the tenant, or someone who lawfully resides with the tenant, is a victim, as defined in s. 950.02 (4), Stats., of that crime.

(10) Allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property and the rental agreement does not include the notice required under s. 704.14, Stats.

Note: A provision requiring the tenant to pay for professional carpet cleaning, in the absence of negligence or improper use by the tenant, does not render a rental agreement void under sub. (7). Because routine carpet cleaning is not a statutorily-imposed obligation of a landlord, assigning this responsibility to a tenant through a contractual provision does not render a rental agreement void. OAG 4-13.

SECTION 12. ATPC 134.09 (4) (a) is repealed and recreated to read:

ATPC 134.09 (4) CONFISCATING PERSONAL PROPERTY. (a) Except as provided in ss. 704.05 (5), 704.11 and 779.43, Stats., or by express agreement of the parties, a landlord has no right to a lien and is prohibited from seizing or holding a tenant's property.

SECTION 13. ATPC 134.09 (4) (b) is amended to read.

(b) ~~A lien~~ An express agreement under par. (a), if any, shall be executed in writing at the time of the initial rental agreement. The landlord shall include the ~~lien~~ agreement in a separate written document entitled "**NONSTANDARD RENTAL PROVISION**" which the landlord provides to the tenant. The landlord shall specifically identify and discuss the ~~lien~~ agreement with the tenant before the tenant enters into any rental agreement with the landlord. The ~~lien~~ agreement is not effective unless signed or initialed by the tenant.

SECTION 14. EFFECTIVE DATE: This rule takes effect on the first day of the third month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22(2) (b), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Residential Rental Practices
Adm. Code Reference: ATCP 134
Rules Clearinghouse #: 14-038
DATCP Docket #: 14-R-02

Rule Summary

Wisconsin Act 143 was enacted on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect some of the provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Disposing of personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

Wisconsin Act 76 was enacted on December 12, 2013. Act 76, among other things, made additional changes to landlord, tenant and DATCP obligations in ch. 704, Stats., including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections
- Prohibition on rental agreement terms that allows landlord to terminate tenancy if a crime is committed in or on the rental property.
- Violations of s. 704.28 or 704.44, Stats., may be an unfair trade practice under s. 100.20, Stats., and the department may not issue an order under s. 100.20, Stats., that conflicts with rights and duties arising under ch. 704, Stats.

This rule makes revisions to ch. ATCP 134 as necessary to conform it to provisions of ch. 704, Stats., as amended, and ensure that enforcement of the rule will not change a right or duty provided by ch. 704, Stats.

Definitions

The proposed rule makes a minor technical revision to the existing rule definition of “dwelling unit” to conform to recent changes in ch. ATCP 125, Wis. Adm. Code.

The proposed rule revises existing rule definitions of “premises” and “rental agreement” to bring them into exact alignment with the most recent version of ch. 704, Stats.

Disclosures required before entering into a rental agreement

The current rule requires certain disclosures a landlord must make to the tenant before entering into a rental agreement with, or accepting any earnest money or security deposit from, a prospective tenant. These disclosures relate to various conditions affecting habitability, including uncorrected building code violations.

Act 143 created s. 704.07 (2) (bm), Stats., which requires disclosures relating to building code violations that are generally similar to the disclosures prescribed by the current rule.

This rule repeals and recreates the building code violation disclosure requirement to make it identical to the disclosure required by the statute.

Returning security deposits

The current rule establishes a minimum timeline for when security deposits must be returned to the tenant. In most cases, the landlord must return the security deposit within 21 days of the tenant vacating the property.

Act 143 created, and Act 76 amended s. 704.28 (4), Stats., which incorporates similar security deposit return requirements. Although under the statutory requirements, if the tenant vacates the property before the end of the rental agreement, and the landlord does not re-rent the property, the landlord must return the security deposit within 21 days of the last day of the rental agreement.

This rule amends the requirement to return a security deposit to be identical to the statutory provision.

Withholding security deposits

Under the current rule, a landlord may withhold a tenant’s security deposit only for specific reasons listed in the rule, such as: damage to the premises; unpaid rent; unpaid utilities or assessments that the landlord is liable for unpaid amounts; or, other reasons specifically listed in the rental agreement as “nonstandard rental provisions.”

Act 143 created s. 704.28 (1), Stats., which incorporates very similar (but not identical) provisions into the statute.

This rule makes minor changes to the wording of the provisions relating to withholding a tenant’s security deposit to conform the rule to the statute, but does not substantially change the requirements from the current rule. It also makes slight changes related to “nonstandard rental provisions” to conform to s. 704.28 (2), Stats., as created by Act 143

and amended by Act 76.

Prohibited rental agreement provisions

The current rule describes provisions that a landlord is prohibited from placing in a rental agreement, such as:

- Authorizing eviction by other than judicial procedure.
- Acceleration of rent payments if tenant breaches obligations.
- Requiring the tenant to pay landlord's attorney's fees in the event of a dispute.
- Authorizing landlord to confess judgment against the tenant.
- Relieving the landlord from liability for damage or injury caused by negligent acts or omissions of the landlord.
- Imposing liability on the tenant for personal injury arising from causes clearly beyond the tenant's control.
- Waive obligation on the part of the landlord to deliver and maintain the premises in fit or habitable condition.

Act 143 created and Act 76 revised portions of s. 704.44, Stats., which describe prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. In addition, Act 143 created two new prohibited rental agreement provisions – allowing the landlord to take certain actions because a tenant contacted law enforcement, health, or safety services; or allowing the landlord to terminate the tenancy if a crime is committed on the rental property. Act 76 refined this particular prohibition to clarify that it apply to a termination of tenancy based solely on the commission of a crime. Act 76 also adds an additional prohibition against rental provisions that allow termination for a crime committed in relation to the rental property and the rental agreement did not include the notice requirement relating to certain domestic abuse protections.

Further, Act 143 states that the entire rental agreement is void and unenforceable if it contains any of the prohibited provisions. The current rule does not have such a provision, but instead relies on a test established by the courts to determine whether the entire rental agreement is void based on the inclusion of a prohibited provision. This rule revises the prohibition on certain rental agreement provisions so that the rule is identical to the new statute. This rule also incorporates the provision in s. 704.44, Stats., that declares the entire rental agreement is void and unenforceable if it contains any of the prohibited rental agreement provisions.

Confiscating personal property left behind by the tenant

The current rule prohibits the landlord from confiscating the tenant's personal property except as authorized by law or in accordance with a written lien agreement. The current rule also prescribes the form and manner in which the landlord and tenant may execute the lien agreement.

Act 143 created and Act 76 revised s. 704.05 (5), Stats., which allows a landlord to dispose of personal property left behind by the tenant at the landlord's discretion, as long as certain conditions are met. For example, there must not be a written agreement to the contrary, and the landlord must provide notice to the tenant of his or her intent not to store the property before the tenant enters into or renews a rental agreement.

This rule amends the current rule to align it with s. 704.11, Stats. It also replaces references to a written lien agreement with a more general written agreement. As with the current rule, this rule prescribes certain requirements and limitations on any agreement allowing the landlord to seize or hold a tenant's personal property.

Small Businesses Affected

The current rule and the proposed rule regulate transactions between landlords and tenants. Many landlords are small businesses. However, this proposed rule does not have any effect on any small business. The proposed rule does not change the duties and responsibilities of landlords in relation to their tenants. Instead, the proposed rule states the duties and responsibilities of the landlord and eliminates inconsistencies between ch. 704, Stats., and ch. ATCP 134, Wis. Admin. Code.

Reporting, Bookkeeping and other Procedures

The proposed rule does not create any new reporting, bookkeeping or other procedures for small businesses.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." For the most part, this rule does not make special exceptions for "small businesses". The nature of the subject matter does not lend itself to differentiating between types of businesses.

Conclusion

This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this 25 day of August, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 

Sandy Chalmers, Administrator,
Division of Trade and Consumer Protection

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☐ Original ☒ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 134, Residential Rental Practices

Subject

Residential Rental Practices

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect
☐ Indeterminate

☐ Increase Existing Revenues
☐ Decrease Existing Revenues

☐ Increase Costs
☐ Could Absorb Within Agency's Budget
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy

☐ Local Government Units

☐ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

The department enacted ch. ATCP 134, Wis. Adm. Code, in 1980 and the rule was revised in 1998. The existing rule regulates rental transactions between landlords and residential tenants as follows:

- Requires the landlord to provide to the tenant before entering into the rental agreement copies of the rental agreement and a receipt for any earnest money or security deposits that the tenant has paid to the landlord.
- Requires the landlord to disclose to the tenant before entering into the rental agreement the names and addresses of the owners and managers, code violations and other conditions affecting habitability, and any utility charges that the tenant may be required to pay.
- Prescribes procedures for accepting and withholding earnest money fees and credit check fees.
- Prescribes procedures for handling security deposits.
- Prescribes procedures for promises to repair.
- Prohibits a landlord from including in rental agreements provisions that do the following:
 - Authorize unlawful eviction.
 - Accelerate rent payments in event of tenant default.
 - Require the tenant to pay attorney's fees.
 - Authorize the landlord to enter a plea in a court action on behalf of the tenant in which the tenant agrees to accept a judgment against the tenant.
 - Relieve the landlord from liability for property damage or personal injury caused by the landlord.
 - Impose liability on the tenant for property damage or personal injury not caused by the tenant.
 - Waive statutory or legal obligations of the landlord.
- Prohibits a landlord from:
 - Advertising or renting condemned premises.
 - Unauthorized entries.
 - Automatically renewing a lease without notice.

- Unlawfully confiscating personal property.
- Engaging in retaliatory or self-help eviction.
- Charging late rental fees and other penalties not specified in the lease.
- Misrepresenting the dwelling units offered or the amount of all rent and non-rent charges.
- Failing to disclose all non-rent charges in connection with the representation of any rent amount.

2011 Wisconsin Act 143 was enacted on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect certain the provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Disposing of personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

2013 Wisconsin Act 76 was enacted on December 12, 2013. Act 76, among other things, made additional changes to landlord, tenant and DATCP obligations in ch. 704, Stats., including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections.
- Prohibition on rental agreement terms that allows landlord to terminate tenancy if a crime is committed in or on the rental property.
- Violations of s. 704.28 or 704.44, Stats., may be an unfair trade practice under s. 100.20, Stats., and the department may not issue an order under s. 100.20, Stats., that conflicts with rights and duties arising under ch. 704, Stats.

This rule makes revisions to ch. ATCP 134 that are necessary to conform the rule to provisions of ch. 704, Stats., (as amended) and ensure that enforcement of the rule will not change a right or duty provided by ch. 704, Stats.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This proposed rule makes a number of minor modifications to the existing rule. However, these modifications simply align the rule with policy changes dictated by the legislature in 2011 Act 143 and 2013 Act 76. Therefore, any economic or fiscal impact would have been caused by that legislation, not this proposed rule.

Landlords and Tenants

Generally, relationships between landlords and tenants are governed by ch. 704, Stats., and the existing ch. ATCP 134, Wis. Adm. Code. The legislature recently made a number of changes to ch. 704, Stats. – some of which relate to subjects that are currently in ch. ATCP 134, Wis. Adm. Code. This rule modifies the existing rule to ensure that there is no confusion between the rule and the recently revised statute.

Utility Rate Payers

The rule will have no impact on utility rate payers.

Local Governments

This rule will not impact local governments. Local governments will not have any implementation or compliance costs.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

This rule benefits landlords, tenants, and other interested parties by ensuring that the rule follows policies recently adopted by the legislature.

Alternatives

Not make changes to existing rule. This would mean a number of provisions of the existing rule would be similar to the statute; but worded slightly differently; which could cause confusion.

Long Range Implications of Implementing the Rule

Same as Economic and Fiscal Impact discussed above.

Compare With Approaches Being Used by Federal Government

Federal law does not generally regulate landlord and tenant relationships or residential rental practices. The Federal Fair Housing Act of 1968 makes it illegal for a landlord to discriminate against a potential tenant because of a person's race, sex, national origin, or religion, and it prohibits certain discriminatory conduct.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These laws address common topics such as rental agreements, security deposits, and other duties of landlords and tenants.

Comments Received in Response to Web Posting and DATCP Response

DATCP received no comments related to the economic impact in response either to the posting on the DATCP external website or the statewide administrative rules website. DATCP did, however, receive comments on the content of the proposed rule. DATCP has considered these comments as part of the public hearing process.

